

MICHIGAN SUPREME COURT

PUBLIC HEARING
SEPTEMBER 27, 2006

CHIEF JUSTICE TAYLOR: Good morning. We are in public hearing today. Each speaker has three minutes. So the remarks will have to be ended at that point. The first item is Item #1 concerning bond in nonsupport cases. Mr. Srinivasa.

ITEM 1: 2003-38 – Bond In Nonsupport Cases

MR. SRINIVASA: (off mike)

CHIEF JUSTICE TAYLOR: That's right, sir.

MR. SRINIVASA: Thank you, your honor.

CHIEF JUSTICE TAYLOR: I understand you're down here for two so you can take three minutes on this first one, the bond case and then the family division rules you can then do your three minutes there right while you're there.

MR. SRINIVASA: That's with regard to 2005-22?

CHIEF JUSTICE TAYLOR: You're here on 2000 - you're here on all three aren't you?

MR. SRINIVASA: All three that's why –

CHIEF JUSTICE TAYLOR: Okay, well you should get nine minutes, divided up three minutes on each.

MR. SRINIVASA: I get nine minutes – keep on going?

CHIEF JUSTICE TAYLOR: Okay.

MR. SRINIVASA: If I may, if I move onto the next one which is 2005, no 2003-38.

CHIEF JUSTICE TAYLOR: That would be 3-38, the bond matter.

MR. SRINIVASA: In terms of unintended consequences, the legal term that was brought on people in India because of some ruling that was made I can clearly bring that to the charge or issues the unintended consequences. One of the counties in Michigan in their 2003 child support, Title IV-E report, stated that there is child support based on how much, I'll quote from it exactly in a moment, program funding. This is from Leelanaw County Child Support, Title IV-E Report. Under the IV-E agreement, the state pays 66% and the county pays 34% of the cost of the program. These costs include funding a part-time family support coordinator and 10% of the prosecutor's time. In addition, Leelanau County receives monetary reimbursement under the Federal Incentive Program. The incentives are based on five criteria: rate of paternity dollars, rate of support dollars, collection of current support, collection of arrears, and cost effectiveness per case. We compete with other counties for this money. The higher our percentage the more money will be reimbursed. To this we can realize tax savings for Leelanau County residents. Our reimbursement money goes to our Tri-County (inaudible) and Leelanau Friend of the Court Office who are using our contribution to the budget - which is what I call unintended consequences of Title IV-E. In Title IV-E they said we'll give you money, but the state bureaucracy and the people who already got the money decided okay we're going to increase child support for anybody and everybody (inaudible) anyone's (inaudible) to allow all (inaudible) and okay we're going to have a billion in child support arrearage. I've had my own personal experience. I was a general manager for a large company. And then I was vice president and director of sales in North America for a British company it brought \$3 billion (inaudible) and that company downsized and I lost my job and the Friend of the Court (inaudible) a huge income on my part. I wasn't going to make a six figure income in the next - within the next day because those kinds of jobs are not a dime a dozen, available all over the place. So if you're going to make and say to me okay we're going to put people in jail - 25% of the arrearage should be for bail setting and all of these things, they're just going to throw lots of people in jail. And this is what the unintended consequences which I was giving you an example in the India case which was suppose to help women instead it turned out to be legal (inaudible)

CHIEF JUSTICE TAYLOR: Sir ?

MR. SRINIVASA: and that's why I suggest that you should not be going in that direction.

CHIEF JUSTICE TAYLOR: Excuse me. I think your time is exhausted on 3-38, and that leaves you with three minutes to speak about 2005-04 the Family Division Rules.

ITEM 3: 2005-04 – Family Division Rules

CHIEF JUSTICE TAYLOR: Sir, I just want to tell you. I just want to let you know your time now is exhausted on 2005-22. So you might want to move on to the other ones.

MR. SRINIVASA: Yes. This is the Title IV-E funding which (inaudible) what this Court is trying to do meaning we want to go with what the federal law has been and so we can get more Title IV-E funding for the children. It's the same thing that has happened in Title IV-D my experience has been, as Leelanau County clearly stated more paternity dollars, more child support dollars, more collections, more arrearages, we get more money and we're competing with other counties so it's time for us to increase these things. What is going to happen? Title IV-E will become similar to Title IV-D – anybody and everybody will be okay we want to put them in foster care get more money. We'll do everything that we need to do in terms of the bureaucracy to have our own job security and make more money. And I think that it's going to head in that direction. It's time to stop the Title IV-E and Title IV-D money (inaudible) within the state and say is what we need to do right for the children is not for the money. Forget about what the money is. Figure out what needs to happen in terms of what the (inaudible) of the children of Michigan and do it right. That's why I'm here. Thank you.

CHIEF JUSTICE TAYLOR: Thank you. I might comment sir that I think some of the things you're concerned about are legislative in nature and you may want to think about contacting people in the legislative branch about some of these things. Some of them are really quite beyond us – the federal legislation and so on. And so it might be something for you to think about there. It might be a chance to interest members of the Legislature and the concerns you have but we appreciate your coming today. Thank you, sir.

MR. SRINIVASA: Thank you, your honor. And we're meeting with the Legislature this afternoon.

CHIEF JUSTICE TAYLOR: Thank you. We will now go to Item 3 – Family Division Rules. Kathleen Oemke.

MS. OEMKE: Good morning Justices. I'm here today to talk about the proposals in Item #3, specifically Court Rule 3.963 where you have a court ordered custody. The language in the current rule indicates "an officer or other person." This language is vague and it offers little protection to the public or the officials trying to do their job in removing children. The proposed language by Judge Owens in his comments "the court may" – his suggested language is the court may issue a written order authorizing a child protective service worker, an officer, or other person deemed suitable by the court to immediately take the child

into protective custody would be more helpful to those in service as well as to protect the public. The court is usually presented with oral information on an emergency basis in these types of petitions. It is believed that those – that the court has in mind to carry out the order in these emergency situations that are addressed with that language. The next item is the Court Rule is 3.974 Post Dispositional Hearings – Child in Home.

JUSTICE CORRIGAN: Can I interrupt and ask a question?

MS. OEMKE: Yes.

JUSTICE CORRIGAN: All right. I'd just like to know from your understanding of Judge Owens proposed reformation whether that truly is consistent with the Title IV-E requirements that the federal government has imposed on Michigan or whether that places too much authority in the hands of the court as opposed to the agency?

MS. OEMKE: Truthfully, Justice, I do not know. But I think that – my thinking is that an officer or other person is much more general language and —

JUSTICE CORRIGAN: Doesn't the Title IV-E regime require the authority to be placed in the social agency – in the Executive Branch agency?

MS. OEMKE: In the – it is more administrative in the social agency. However, any other person is very vague and --

JUSTICE CORRIGAN: Well I understand what you're saying, but isn't any other person deemed suitable by the court going to be viewed by HHS as an improper usurpation of power by the court when it belongs to the federal agency? Or do you know the answer?

MS. OEMKE: I don't know the answer to that.

JUSTICE CORRIGAN: Okay.

JUSTICE MARKMAN: Are there any circumstances under which you, like your predecessor Mr. Srinivasa, would be willing to forego federal monies in order to maintain what you think are the wisest provisions of law?

MS. OEMKE: Well I don't think that we should ever overlook the availability of federal funds because I think they are very important to the state funding of foster care and other agencies. However, I believe that it's still protection of the public that we're looking at and the child. If we just have other

persons without designation able to – what – how does the general public understand that those people have authority to remove their children? I mean it's a very critical type of situation that we're talking about. It's an emergency. Either the parents are in trouble with the law or the children are in very critical danger and who is going to carry out the court's order saying it is contrary to the welfare for the child to remain in that home and reasonable efforts have been made to preserve the child but they have not been successful. And those are the types of things that we're looking at.

JUSTICE MARKMAN: But the only relevant question is the one that Justice Corrigan just asked which is whether or not the provisions are in compliance with what HHS would have us implement.

MS. OEMKE: From the information that I have I didn't believe that Judge Owens' suggested changes were contrary to that, but I haven't dealt with that in detail.

CHIEF JUSTICE TAYLOR: Thank you very much Ma'am.

ITEM 4: 2005-22 – MCR 3.927 – Testimony in Child Protective Proceedings

MR. SRINIVASA: The first one is with regard to the hearsay evidence. And –

CHIEF JUSTICE TAYLOR: This is in the – this is 5-22.

MR. SRINIVASA: Yes.

CHIEF JUSTICE TAYLOR: Okay.

MR. SRINIVASA: I would speak about my personal experience first and then it may not directly involve with regards to CPS and protective services that how hearsay evidence (inaudible) people in the State of Michigan and what action this Court should really take to help the people of Michigan. I was in a divorce case. It took one and a half years in Washtenaw County Circuit Court, filed on February 3, 1998. The judge ruled on it and the final ruling came in June 2002. Three years – four years finally (inaudible). And the basis for these (inaudible) taking a long time were false accusations of abuse which were never there. I never hit my children. And it was pretty much hearsay. One party stating that this is the case and the judge accepting it and the evaluator accepting it. Finally after the trial where I didn't get a chance to even testify, because the judge ended the case – ended the trial half way through, and we had the deposition of the evaluator and

we caught the evaluator with fraud – my attorney rather caught the evaluator with fraud. He showed that in fact my ex-wife was hitting the children and the evaluator learned about it. She did not even bring it up in front of the court or mention it anywhere. Where she suggested that I might hit the children so there should be no joint custody and the custody should be handed over to somebody else. So if hearsay is taken to that level and people are willing to remove a father from the child's life (inaudible), I think the kind of stuff that you're trying to do here I know that there are a lot of children who need to be protected, but it turns out to be something different. After my personal experience I bring you some of the information from other places where similar things have happened. This is from —

CHIEF JUSTICE TAYLOR: Maybe what you might want to do given your time limitations is present it to the crier and he can then make sure that we get it.

MR. SRINIVASA: Okay. Do I give it right now, or?

CHIEF JUSTICE TAYLOR: Well you can give it to him now or - I don't want to take away your time. You're almost done on 5-22.

MR. SRINIVASA: Mainly there are a lot of issues about dowry and women being harassed in all of this stuff so the (inaudible) made a lot which is pretty much by hearsay. The husband and the parents would be thrown into jail. Recently the Supreme Court of India, the two judges came out and stated in a case that this provision had been misused so much that it's become (inaudible) meaning people who really needed help were not getting the help. Whereas people who wanted to cry wolf and talk false accusations were (inaudible) —

CHIEF JUSTICE TAYLOR: Thank you. The fourth item is 2005-22, Dan Diebolt. It appears he's not here so that completes our list of speakers. Thank you very much.